



**SUBMISSION | SOUTH AFRICAN CITIZENSHIP ACT, 1995 (ACT NO. 88 OF 1995).
PUBLICATION OF THE DRAFT REGULATIONS ON THE CITIZENSHIP ACT, 1995.**

Submitted by

Consortium for Refugees and Migrants in South Africa (CoRMSA)

To

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1. Introduction:

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is pleased to make this submission to the **Draft Amendment Regulations on the South African Citizenship Act**. The Consortium for Refugees and Migrants in South Africa (CoRMSA) is a national network of organisations working with asylum seekers, refugees and other international migrants. CoRMSA currently has 26 member organisations across the country. It was established in 1996 as a loose network of organisations working with refugees as the National Consortium for Refugee Affairs (NCRA) and was later registered as an NPO. In 2007 NCRA's mandate was extended to include the protection of international migrants. Our members are made up of direct legal and social service providers; research institutions and refugee and migrant community groups.

The CoRMSA model is such that through our members and partners, collectively we cover work at local, provincial, national, sub-regional, regional and global levels to ensure that the daily challenges faced by non-nationals are addressed through policy and practices. CoRMSA has over fifteen years of experience working on migration engaging in advocacy and lobbying; coordination and network building; capacity building; rights awareness and information sharing. CoRMSA's overall objective is the protection and promotion of asylum seekers, refugees and migrant's rights in South Africa, regionally and internationally.

CoRMSA welcomes this opportunity and below makes recommendations (submissions) on specific sections on **Draft Amendment Regulations on the South African Citizenship Act, 1995**.

CoRMSA is available to make oral presentations regarding this submission should such an opportunity arise.

In our submission, the word "**Department**" refers to the National Department of Home Affairs (DHA).

2. Citizenship and transformation

Citizenship is central to a person's sense of belonging and dignity in this world. This was concisely noted by Khampepe J in the *Chisuse and Others v Director General, Department of Home Affairs and Another [2020]* case:

"Citizenship and equality of citizenship is therefore a matter of considerable importance in South Africa, particularly bearing in mind the abhorrent history of citizenship deprivation suffered by many in South Africa over the last hundred and

more years. Citizenship is not just a legal status. It goes to the core of a person's identity, their sense of belonging in a community and, where xenophobia is a lived reality, to their security of person."

Ensuring accessible and equitable pathways to citizenship is enshrined in South Africa's constitution and is key to South Africa's transformation. CoRMSA takes this opportunity to make submissions to influence and improve safeguards and a citizenship regime which reflects the progressive nature of the Constitution and serves to preserve dignity and human rights of all who live in South Africa.

CoRMSA observes, promotes and respect the South African Constitution on "Citizenship" stating in section 20 that "*No one may be deprived of citizenship*". CoRMSA argues that democracy and access to human rights cannot be effective on its own, but is reliant on the democratic government and civilians to sustain it. It is for this reason CoRMSA is making the following submissions and recommendations.

3. Submissions and recommendations to Draft Amendment Regulations on the South African Citizenship Act, 1995.

a. Submission in terms section 2 of the regulations: Definitions

CoRMSA recommends that the definition of '*Delegated Official*' as per regulation 3B is included and defined in this section, and should include the qualifying criteria for how a delegated official would be appointed by the Minister.

We also recommend that the definition of 'hearing' is expanded to include as per regulation 3B to include its purpose and procedures.

b. Submission in terms of Section 2(c) (h)

CoRMSA submits that the requirement to prove employment is superfluous for an applicant of naturalisation in terms of section 5 of the Act. The requirement of proof of employment is exclusionary in that it only applies to a certain working group people living in South Africa. In a context of extreme and growing unemployment resulting in many people working in the informal sector characterised by precarious, insecure and unprotected conditions and will not have formal means (contract, salary slip or any form of employment proof) to prove their employment.

CoRMSA is concerned that this requirement implies that to be a citizen you must be employed assuming that unemployed people are second class citizens or cannot be

naturalised. CoRMSA recommends that section 2(c)(h) is removed from the regulations in its entirety

Submission in terms section 2 (b)(e)

CoRMSA submits that the requirement of an original identity document, or, in the case of a child, an original birth certificate' is not necessary. Original documents can get stolen, lost or damaged. We submit that the inclusion of an affidavit or record of birth or document showing proof of obtaining these original documents should be included in regulation 2(b)(e). In addition, the Department of Home Affairs is the duty bearer and authoriser (Issuer) these original documents and should have proof of such in their records to support such an application.

c. Certificate of naturalisation in terms of Section 4 (3) of the Act

Submission in terms of section 3A (1) (a)(i) (ii)(iii)(iv)(v)(vi) (vii)

CoRMSA submits that the required documents for application for naturalisation as per section 4(3) which include the original DHA-19 form issued to the applicant upon registration of his or her birth in terms of Birth and Deaths Registration Act, a copy of proof of birth issued by the health facility in which the applicant was born, the original copies of applicants parents asylum seeker permit or refugee status issued in terms of Refugee Act, where applicable the refugee identity documents of the applicants parents; where applicable, the original refugee travel documents of the applicants parents; where applicable, the original copies of the death certificates, and citizenship at the time of death, of applicants parents; applicants asylums seeker visa or refugee status issues in terms of Refugee Act; where applicable, the original of the applicants travel document place a restrictive burden on the applicant to provide original documents, where it is common place for documents to get damaged, stolen or lost as a result of the individuals circumstances or the institution from which documents ate provided- for example a health facility where a baby is born may not have records of birth. CoRMSA submits that an inclusion of an *affidavit* in place of any original documents can be submitted in as a requirement for section 3(4) application.

4. Submission in terms of 3A (1)(a)(ix) and b(viii).

The requirement for an applicant for naturalisation in terms of section 4(3) of the Act to provide a school report, a letter from the principal with any extract of a school register, of the primary school in which the applicant was registered for Grade 1 is unnecessary and

places an unfair burden on the applicant to source proof which may not be possible to find, at no fault of their own. A person applying for naturalisation at majority would have been in Grade 1 a minimum of eleven years prior to the application. This requirement assumes that a school would have kept records for that period of time and that the school would still be open. Furthermore, it is well known that children born to asylum seekers, refugees and economic migrants often face barriers entering or accessing the school system and may not be admitted from Grade 1, making this requirement unwarranted. Nonetheless, the Department should and must bear in mind that in South African context, we also have registered Early Childhood Development and Grade R in place. Hence making the Drag 1 proof unwarranted.

CoRMSA submits that this requirement should be omitted or removed from the regulations in its entirety and recommends that the requirement in terms **3A 1(a)(ix) and (b)(viii)** state that an applicant *may* provide proof of enrolment (early childhood development letter, school report, letter from teacher or principal confirming enrolment) in any educational facility prior to the application as a supporting document to this application.

5. Submission in terms of 3A (1)(a)(x) and b (ix).

CoRMSA submits that the requirement for proof of residence of the applicant from the date of birth to the date of application as contemplated in section 4(3) is an excessive requirement and recommends that it should be omitted from the regulations. Firstly, the grounds of what is considered 'proof' is not provided for in this regulation which could result in an applicant being unfairly excluded from making an application. It is superfluous to expect an applicant to provide proof of residences from the date of birth to the date of application. The applicant may have no memory of their residence as a child, an applicant may have been resident in informal housing where it is not possible to provide a rental agreement, utilities bill or similar document as 'proof'. Furthermore, an applicant's documents to prove residence may be lost, stolen or damaged as a result of fire or flood or any natural disaster.

CoRMSA strongly submits that this regulation be omitted. We recommend that the requirement allows for extended proof and is written as follows: an applicant "*may*" provide *any* proof of residences from the date of birth to the date of application, this can include an affidavit of familiarity, acknowledging the applicant's whereabouts at a given time. The proof of residence from birth should be optional.

6. Submission in terms of 3A (1)(a)(xi) and (b)(x)

7. Submission in terms of the regulation 3A (1)(a)(xi) and (b)(x) in which a requirement for citizenship includes 'proof of knowledge of one of the South African official language's'

CoRMSA submits that this requirement is arbitrary and is not in line with the principle of citizenship without discrimination as per Chapter 2 Section 9 of the Constitution of South Africa which states that '*the state may not unfairly discriminate directly or indirectly against anyone on one more grounds, including, race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth*'. Making language as criteria or requirement on a national policy is unconstitutional and as that policy will be against the Constitution.

This is further reiterated in section 9(4) stating that *that no person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination*'.

Section G of Annexure 1A provides an opportunity for the applicant to make a subjective determination of their proficiency in a South African language. While a person may be knowledgeable of a South African language at the time of application, this requirement places an unfair burden on the applicant in having to give evidence to this knowledge.

CoRMSA submits that this regulation is problematic and can result in further exclusions, institutional discrimination based on language leading to deprivations of citizenship. Furthermore, there are no guidelines on how 'knowledge' or proficiency of a South African language would be determined, meaning that this would be a decision of the discretion of a Home Affairs Official and such will amount to prejudices and abuse of power by officials. CoRMSA recommends that this requirement is omitted from the regulations.

8. Submission in terms of 3A (2)(a)

CoRMSA submits that the requirement for naturalisation as per Section 3(4) of the Act be made by a person born in the Republic between 6 October 1995 and the date of reaching majority (18) is arbitrary this should be omitted. We acknowledge that this date coincides with the promulgation of the Act but the Act does not have these restrictive time frames. These time frames will exclude people and prevents applicants who meet all other requirements to make an application in terms of Section 3(4) of the Act except their date of birth, which is of no fault of their own. CoRMSA submits that this should be omitted from the regulations as it completely excludes applicant born before that said dates. The Department should and must understand that majority of people born before 6 October

1995 were born during the apartheid regime with no accommodative systems of the majority.

9. Submission in terms of 3A (2)(b)

This section goes against citizenship by birth- its already in the Act- any child born in South Africa. CoRMSA submits that this section be reviewed or be omitted entirely as it does not speak the language of citizenship by birth.

10. Submission in terms of 3A (2)(c) (This section is already in the act)

In contradiction to the Act, renouncing of citizenship is not proportionate, it excludes children born of refugees who do not have permanent residence but have been born in South Africa to be able to apply for citizenship through naturalisation through Section 3(4) – This regulation should be omitted and should remain as included in the citizenship act 3(4). Section 28 of South Africa’s Constitution guarantees every child the right to a name and nationality. Furthermore, Section 2 (2) of the Citizenship Act assures citizenship to every child if he/she does not have the nationality of another country. While these are seemingly progressive laws, they are limited in implementation by means of application, meaning that they are restrictive and exclusionary particularly with regards to children born to refugees or asylum seekers in in South Africa.

11. Submission in terms of 3A (3)

CoRMSA submits that the requirement 3A (3) for registration of birth in terms of the Births and Deaths Registration Act (BDRA) means a birth of the child was registered within 30 days of the birth in terms of Section 9 of the Births and Deaths Registration Act is superfluous and in contradiction to the BDRA which makes various provisions for the late registration of birth. It was well documented that numerous barriers exist in birth registration processes for both citizens and non-citizens. This includes access to Department of Home Affairs Offices, difficulties relating to documentation of parents of child, and cost involved in birth registration (transport and late birth registration fees) making birth registration a restrictive burden. Requirement 3A (3) is in contravention to the provisions for late birth registration as per the BDRA. CoRMSA recommends that this regulation is omitted in its entirety or reviewed to include late registration of birth process.

12. Submission in terms of 3A (6)

CoRMSA submits that regulation 3A (6) contravenes the Constitution and the Act itself. Chapter 1 Section 3(2)(a) of the Constitution states that’s all citizens: *are equally entitled*

to the rights, privileges and benefits of citizenship. Furthermore, the Citizenship Act provides for citizenship through birth, decent and naturalisation. This regulation is in contradiction is Section 2(1)(b) of the Act which notes that *'Any person- who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South Africa citizen, shall be a South African citizen by birth.* As well as Section 3 of the Act granting citizenship through decent.

In supporting the above we submit further that Section 3A (6) is at risk of perpetuating family separating and should rather prioritise family unity. CoRMSA submits that this regulation should be omitted in its entirety.

13. Submission in terms of 3A (7)

CoRMSA submits that regulation 3A (7) is in contradiction to the constitution which categorical terms states that **'no citizen may be deprived of citizenship'**. We further submit that this regulation is not in line with the Promotion of Administrative Justice (PAJA) Act Section 5(1) which states that *'Any person whose rights have been materially or adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reason for the action'* Section 7 of PAJA (Promotion of Administrative Justice Act) Section 5(1)

Supporting the above argument literally, section 8 (3) of the Act does not make or it is clear on the provision that "citizenship may be deprived" but state that "the Director General must confirm by way of a certificate, in a form substantially the information in Annexure 6 (DHA-237), that an application for resumption of South African citizenship has been approved.

14. Submission in terms of Regulation 3B(a)

CoRMSA submits that regulation 3B(a) contravenes Section 10 (1) of the PAJA Act in that it does not provide the procedures to be followed by a delegated official in order to promote procedural fairness. CoRMSA submits that this regulation needs to include the specific procedures or nature of the hearing as per Regulation 3B(a).

15. Submission in terms of Regulation 3B (b)

CoRMSA submits with concern the regulation 3B(b) regarding applicants not being able to have legal representation in a hearing. Section 33(1) and (2) of the Constitution provides



that everyone has a right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. Not allowing an applicant to have legal representation creates a restrictive burden for the applicant to respond to an unknown delegated official, in a procedure in which the process is unknown, this will likely result in biased or prejudiced outcome of the hearing. CoRMSA submits that in order for the regulations to be in line with Constitution and PAJA Act that this regulation should be reviewed and allow for legal representation in a hearing.

List of CoRMSA Members : <https://www.cormsa.org.za/about-cormsa/cormsa-members/>

End of submission.

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